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[Boston? 1854?]

Hall & Kelley prepared this paper
and also others showing a clear title
in the claimants to the lands in
question

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Reasons for a public confirmation of the title to the lands purchased in 1791, by certain American citizens, of Indian chiefs, on the Northwest coast of North America.

The memorial of George Barrell and S. V. S. Wilder in behalf of themselves and others, now before Congress, prays for a confirmation of the title, above mentioned.

A portion of the land is situated on Quadras Island which, by the treaty of 1846, was conveyed to Great Britain. Several of the tracts, being comparatively of great value, and within the British jurisdiction, it behooves the claimants to request of the government, a recognition of their rights on that Island. Other lands, there are, situated south of the northern boundary of Oregon; and of course, are within the jurisdiction of the United States.

The whole territory claimed to have been purchased extends along the Pacific coast from the 47th to, nearly, the 51st parallel.

In a report made upon the subject in the Senate of the United States, in 1852, is the following statement; and a just one it is. "From the 47th parallel to the 51st, beyond the northern limit of the purchases, is about four degrees of latitude, and is in the opinion of your committee, undoubtedly, the location of the tracts purchased of the Indians, and claimed by the owners with the admission of the British navigators and authors."

A brief description of that portion of the Island, which is embraced in the purchases, may not be wholly uninteresting to the friends of the claimants, if so be, they are the friends of justice, and of the rights of man.

The tracts, there purchased, comprehend an area of 2500 square miles; and have a shore of more than 100 miles in extent, which is indented with harbors as easy of ingress, and as safe of an-

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Hall & Kelley "one of the claimants
and horribly persecuted on account
of being one" - because he testifies
against them that their ways are evil "see
you will know why they hate me"

chorage, and in all respects, as convenient for shipping as can be found on the eastern shores of the Pacific. Their general aspect is truly charming—variegated with rivers and lakes, hills and dales and dark woodlands, with other such things as contribute to the charms of the beauteous landscapes of nature's inimitable painting. The forests are richly interspersed with oak and pine, and abound with lordly trees. That part of the Island intersected by the 49th parallel is particularly spoken of, in the "Journey Round the World,"* by Sir George Simpson, "Governor-in-chief of the Hudson Bay Company's territories," as being a fine country.

That book, page 160, remarks "The neighboring country comprising the southern end of Vancouvers Island† is well adapted for colonization; for, in addition to a tolerable soil and a moderate climate, it possesses excellent harbors, and abundance of timber. It will, doubtless, become in time, the most valuable section of the whole coast above California."

On some of the tracts are localities of lime and coal. These useful articles of commerce are found at the sea-side, where vessels are, now, receiving cargos. Finally, it is said by those who have had good opportunities to know about the tracts, that they possess great natural advantages for agriculture and commerce, and furnish excellent positions for manufacturing and commercial towns; and the foundations of some such towns, it is understood, are, now, being laid. There is not on all our Pacific shores, a fairer country than that about De Fucas Sea; and a more valuable one too, taking into consideration forty or fifty years of occupancy by a people like the enterprising and industrious yankees. The valley of the Sacramento and declivities of the Sierra Nevadas with all their gold-producing capabilities are not exceptions. Any estimate made of the claimants' lands on the Island, less than \$8,000,000, would be unreasonable.

Prior to 1840, the author of this book collected the evidences of the purchases; and in that year, prepared the Congressional

* That book was published and ready for the public *immediately after* the settlement of the "Oregon question," and the conclusion of the treaty of 1846. Probably, it was written one or two years before that event. The author, unquestionably, was a lover of truth. He had stated, that the "Puget's Sound Agricultural Association" was composed, exclusively, of persons belonging to the H. B. Co. implying, there was really no such association; and, it is believed, the assumption of the name was to afford a plausible pretext for a claim to the possessory rights which were recognized and confirmed in the treaty. It is difficult to understand how the men of that British company, under the convention of 1818, could acquire a just title to any lands in Oregon.

† The reason is obvious why a certain Boston merchant suggested a boundary line which should bend round the southern end of that Island.

document—Ho. of Rep., No. 43, which describes the situation and extent of the several tracts, and shows them to have been fairly purchased of the Indians. For the last twenty years, he has talked, written and argued much upon the purchases; and has suffered * greatly on account of them.

The descriptions of the tracts on the Island as given in the deeds, are said, by those unfriendly to the claim, to be vague. This is a mistake. They are sufficiently definite to indentify, within a single rood, the boundaries of the several tracts. The geometrical figure, length of the sides, and diameter of each are given. The only thing doubtful about them is the precise identity of the points of the centers. The latitudes and longitudes of those points may not have been exactly determined by Capt. Kendrick. Nautical instruments, in his day, were more imperfect than now; and astronomical observations could not be accurately made by them. Latitude was seldom determined within three miles; and longitude within six or eight. The claimants have a sure way of ascertaining the precise centers. It would make, however, no material difference should they be established a few rods this or that way. To illustrate—the Clyquot purchase is described in the deed, as having its sides 18 miles N. 18 miles S. 18 miles E. and 18 miles W. of the village of Opisitar which is the center, and in lat. $49^{\circ} 10' N.$ and long. $126^{\circ} 2' West$. The enquiry is, after the center of a village which is clearly described in the historical accounts of the early voyages to that coast.

The deeds taken south of the 49th parrallel were lost; nevertheless, there is much evidence to satisfy of the situation and extent of the territory covered by them. They were taken in the name of the owners; and Kendrick, doubtless, felt less interest in them than in those taken in his own name; and, therefore, neglected to transmit them with the others to Mr Jefferson at the head of the State Department.

As to the validity of the purchases—It will be recollected, that

“While it is *not strange* the H. B. Company, first seeking to prevent the ruin of their trading monopolies in Oregon, and afterwards, to *perpetuate* possession of the Island, should be so bent on his destruction. But it is *wonderful*, the combined forces of the most powerful of wicked men, and the powers of moral darkness with them, should not have long before this terminated his earthly sojourn. Wonderful, —feeble and unsustained, comparatively, by mortal help, he should have succeeded in bringing about that *ruin*; and in throwing insurmountable difficulties in the way of that desired *perpetual possession*; and, after thirty years of constant and daily suffering of the wrathful vengeance of the company's powerful and implacable troops, he should be alive on earth, and able to tell, in any way (stammering and miserable, indeed) the story of his troubles and tribulations. It is because of he “shield of thy salvation,” O merciful God!

neither the British nor American nation, as early as 1791, claimed jurisdiction over any Indian territory on the northwest coast ; and, about the same time of the purchases, the former nation fully recognized in individuals of any nation a free right to purchase lands of the same Indians of whom the claimants, lands were purchased, See ps. 40, 41.

In the public document to which reference has been made, it is stated, that, in 1783, a proclamation was issued by the American Congress prohibiting all purchases of lands within the territories of the United States without the express authority of Congress. As has already been stated, our government had no territory on the shores of the Pacific at the time the purchases were made; and pretended to no jurisdiction there. The proclamation, therefore, could not affect the purchases; because, having no power it could have no effect, beyond jurisdictional limits.

The citizen of any country, says the same document, first taking possession does so in the name of his nation, and jurisdiction of the country with the exclusive right to the soil, subject to the possessory right of the natives, invests in the government of him who first asserts and maintains possession." The correctness of the logic for these deductions, if *deductions* they should be called, does not appear. Reasons why "the right to the soil" so invests are not given. Had it been stated, that the "citizen" taking possession, had, also, purchased land of the natives, a case would then be presumed, which, in one respect at least, would be similar to that of the claimants. For Kendrick while taking possession, purchased lands, and did many meritorious acts to benefit his country. The purchases were made of Indians living under governments of their own beyond, far beyond the sovereignty of any civilized nation, unless Spain is considered an exception. It makes, however, no difference as to the merits of the question, whether Spain is or is not an exception. The proper authority of that nation *permitted* and *allowed the purchases*. Thus Spain confirmed the title; and, by a subsequent act, distinctly recognized the principle of right to purchase; and, again, virtually confirmed the title.

There are abundance of reasons, and good ones too, why the exclusive right to the soil should ~~invest~~ ^{invest} in the claimants. The individual citizen (Kendrick) purchased in the reasonable exercise of a natural right, not required to be given up to the sovereignty commanding the society of which he and the owners were members—over the country of which they were citizens; And the Indian chiefs of whom the purchases were made, had not, as

yet, *lost** their natural right to sell. The misfortune of being brought under the dominion of either Great Britain or the United States had not then happened to them.

This doctrine has ever been admitted by all civilized nations. Great Britain and Spain both admitted it in the first article of their Nootka Sound treaty. See p. 40—this book. *Agents & Signatures*

It was said by British authority in answer to a petition presented to the crown by the E. I. Co. asking a confirmation of the title to lands purchased of Indian Chiefs—"In respect to such places as have been acquired by purchase or grant, your Majesty's letters patent are not necessary. The property of the soil invests in the company, subject only to your Majesty's right of sovereignty" see p. 40. *Events & 2d.*

The report further states—"and a purchase thus made by him" (the individual discoverer) "of the natives would, it is conceived give no title as against his government unless made with the previous consent of the latter," or, (the report omits to state) beyond the jurisdiction of his nation.

Now, has not the validity of the purchases been clearly and fairly proved?† Would any sound jurist in all this enlightened country, say, it has not been? If, then, it has been, *consequentia sequitur* the title should be publicly confirmed, and possession of the land should be given, or a reasonable commutation be paid the claimants.

As to the confirmation—A British subject, Captain John Meares, in 1790, the year previous to the purchases, stated in a memorial to Parliament, that he had been dispossessed by the Spaniards of certain lands purchased of Indian Chiefs on the N. W. Coast. His government, in answer to that memorial, unhesitatingly, it appears, admitted the right in him to make for *himself* the purchase; and promptly and peremptorily *demand*ed of Spain possession to be given to Meares—not to the *government* but to the *subject*. It turned out that Meares had purchased no lands. The British and

* It is supposed by some, particularly hunters, that Indians have no rights; and may be hunted down, and otherwise treated, as are wild beasts,—that cruelties, however terrible, may be practised upon them; but they have *rights* and *souls* and *feelings*, like other men. The horrors of war, among enlightened nations, are nothing compared with the horrors of the intercourse between white men of civilized lands, and the red men of the wilderness, among whom the former roam. *Cruelties* on the part of Indians,—*savage cruelties* as they are called, are *mercies*, compared with the wonted *massacres* by the British and American hunters, upon that oppressed race in Oregon.

† It is the policy of those friendly to the cause of the H. B. Company, whenever they speak of these purchases, to ridicule the idea of their validity. On all occasions, without assigning a single reason, they deny it.

Spanish commissioners Vancouver and Quadra appointed to carry into effect the provisions of a treaty which had grown out of the affair, could find none; but, they found extensive tracts which had been purchased by Capt. John Kendrick in the same portion of Country, and of the same Indians. Quadra, governor of the colony which two years before, had been commenced at Nootka, and acting for the crown, allowed the purchases made by that American citizen, and thereby, confirmed the title to the lands; and Vancouver at the same time, expressed no misgivings as to Kendrick's right to purchase; and, in the last volume of his voyage he speaks of them as having been fairly acquired.

Reader, let us reason together upon this matter; and understand the principles of justice and of the oracles of God involved in it.

Kendrick and the owners had undoubtedly, a right to purchase at the time, and of the people they did; and that right was *natural* to them. And the government, at all times, has a right to prescribe laws for maintaining order in, and regulating the affairs of the society which her citizens compose; but, with her, it is wholly *acquired*; and, only acquired in the institution of sovereignty, in which she finds no right to control or limit the actions of her citizens in a foreign and unknown land—to regulate their intercourse with the people of a land beyond the reach of her sovereign authority; and, having none, any law enacted by her relative to such intercourse would have no force.

Civil law should be founded on justice, and have authority as a characteristic in its nature. Without these, it can have no force. That a law prohibiting the purchases would be without *justice* and *authority* is obvious to any man* who candidly and freely reasons upon the subject. Legislative power with a free people is arbitrary. It is limited by natural rights, and in some other respects.

As a provision was made in the treaty of 1846, with Great Britain confirming rights to lands claimed by her subjects on the American side of the boundary; so a similar provision should have been made in respect to the rights of American citizens on the British side: And, now, certainly, nothing would be more reasonable, especially, after so long a delay, than, that *possession* of the lands on the northern side, be *demand*ed for the claimants; and of those, on the southern side, *possession be given* them; and

* Unsophisticated men, in the humble walks of life, are often better judges in these matters than even some of the most learned legislatures; because the latter make a wrong use of reason—because of their understandings becoming vitiated by the frequent perversion of truth, and constant study and efforts after ways and means to gratify desires for honors, riches and self-aggrandizements.

that our government see to it that they are put into the possession and enjoyment of their inheritance. In view of the neglect to make reciprocal that provision, the government should be the more ready to do these things.

The public document states—"the jurisdiction and title has passed to Great Britain," and "there remains no power in this government to confirm the title." Unhesitatingly, may it be stated, that no title to lands belonging to *individuals* was passed to Great Britain by the treaty. No, not a jot or tittle of the title in question was so passed. An individual is not in that manner to be dispossessed of his property.

A man's right to property justly acquired is from his Creator; and is for him to enjoy till by his own voluntary act he puts it away; or, in the Providence of God, it is taken from him. International treaties cannot take it from him. They are negotiations wholly relative to public affairs. In the conveyance of territory, they convey only what is *national*—public rights and not *private* rights. They can neither alienate nor abrogate private rights. If, therefore, the claimants' title was good before the public conveyance of Quadras Island to Great Britain, it was good afterwards; and remains good until something is done by themselves to impair it; and the American and British nations are under sacred obligations to respect it.

The claimants consist of a numerous and highly respectable body of citizens, and of needy widows and orphans, all anxiously looking to Congress for protection, and for that measure of justice which is their due. They ask the government to secure to them, from the grasp of covetous and evil minded men, their rightful inheritance; and, with the same evenhanded justice as she treats others, so to treat them—as she rewards others who have rendered meritorious services to the country, to reward them, the heirs of those who no less than the best of others, were public benefactors.

But it is said "there remains no power in the government to confirm the title." What has so much reduced her great power? Surely, the treaty took from her no power to do a thing so just, and so much desired, and which it is her prerogative to do.

Finally if the view of this subject be correct, then, let the voice of reason be heard; and, let justice respond; and principle and truth triumph. Let the government meet her obligations to her worthy citizens; and protect—if needs be, at any hazard, and in the plenitude of her power, protect them

H. P. Kelley